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A N S W E R
T O T H E
S E R I O U S I N Q U I R Y
I N T O S O M E
P R O C E E D I N G S

Relating to the

UNIVERSITY of OX---D.

—— *Dīs proximus ille est*
Quem ratio non ira movet. CLAUDIAN.

Ὁ δὲ ἀδικεῖ ἀνακρίδμενος πρὶν ἢ ἀτρεκέως
ἐκμαθεῖ. HEROD. Lib. 7.

L O N D O N :

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ERRATA.

- Pag. 32. *lin. 20. after oblige, read the.*
Pag. 38. *lin. 20. for it is, read is it.*
Pag. 43. *lin. 14. for steadiness, read readiness.*

TO THE
AUTHOR
OF THE
SERIOUS INQUIRY.

SIR,

I*T is now full two Months since your Pamphlet first made its Appearance in the World, which, from the uncommon Endeavours used in propagating it, has been much read; and from the strict Veracity you have every where professed in it, has been too much credited. As you have hitherto met with no Contradiction, all you have advanced has been by many looked upon as authentick, and you have triumphed*

in their Opinion. But when the Affair you treat of shall be set in a true Light, with all the Circumstances that attended it; you will, I believe, lose the Credit you have unjustly gained, and appear a Man of a very different Character from what you have endeavoured to impress upon the Minds of your Readers.

You cry aloud indeed for Justice; but I cannot find throughout your Performance, those sure Marks, that fair Stating of Facts, and that candid Reasoning upon them, which are ever to be met with in Writers truly engaged in so noble a Cause. You affirm, it is for Ox---d, and not against the Man you enter upon the Stage. But this Zeal, I fear, is pretended and false; this publick Motive is a Cloak only to conceal those of a more private Nature. Is it for Ox---d? Why then have you abused and vilified the Governors of that famous University? Why have
you,

you, who write without Censure, in so many Parts of your Work, but more particularly (p. 30.) so scandalously, so infamously reflected upon the Chief Magistrate of the Place: A Man whose Character was ever sacred and untouched, till you dared to offer Violence to it: A Man, who in every single Instance, has strictly kept up to the Duty of his great Office; and especially in the Case lately laid before him, will appear to have acted the Part of a fair, upright, impartial Judge. Is it not against the Man? Why then has your Scandal been so industriously dispersed, sent Gratis to the Families in his Neighbourhood, and to Market Towns; slipt privately into the Hands of Physicians, obtruded upon Apothecaries, scattered in all Places where it was imagined he might be hurt and injured by it? Such low and dirty Methods, Sir, plainly shew your real Designs, and easily discover the Engines which have set you at Work.

Many

Many more Expostulations of this Kind might be used, but they would detain my Reader too long from the main Point. I will only therefore seriously exhort you, for the Sake of that Community of which you profess yourself to have been once a Member, and of which many believe you are still a Member, not boastingly to vaunt yourself, and cast insolent Reflections upon the Governors of the University, much less the Chief Magistrate himself. Imagine not that those whose particular Office it is to guard and protect their Alma Mater, to defend her Liberties, to preserve her Dignity, should have less Care and watchfulness for her Honour and Credit than yourself. Leave the Cognizance of Offences therefore, to Those whose Right and whose Duty it is to inquire into them.

Once more let me advise you, Sir, if at any Time you should be provoked

woked to draw that Pen of yours again, seriously to consider those noble Principles that animated the Breast of a Heathen Philosopher, Εὐεργεσίαν καὶ Ἀληθείαν, Humanity and Truth. Let such find the Way to your Heart, and you will then be much better qualified than you are at present, to vindicate the Honour, Credit and Reputation of the University of Ox---d.

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A N S W E R
T O T H E
S E R I O U S I N Q U I R Y
I N T O S O M E
P R O C E E D I N G S

Relating to the

U N I V E R S I T Y of Ox---d.

BEFORE I enter upon a particular Examination of the *Serious Inquiry* now before me, I shall, as far as the Perplexity of the Writer will give me Leave, exhibit a short Sketch of his whole Performance.

The *Inquirer*, after setting out with Professions of the strictest Veracity, and again (p. 48.) solemnly asserting, that he has not given an unjustifiable Turn to a *single* Fact, is pleased every where almost to give the worst, the most unjustifiable Turn to *every* Fact which he relates; and not content with this, he is likewise pleased to make the Party accused confess all
B and

and singular those Facts, in the very Manner he has cho'se to relate them, (p. 9--36.)

He is afterwards very desirous of imposing upon his Reader a false Account of the *Method* in which those Facts were first laid before the proper Magistrate, giving him to understand, that the Party accused appeared before that Magistrate, in Consequence of a *previous Accusation* laid before the same.

And, lastly, (which is indeed the main Scope and Drift of his Performance) he labours to prove, that the same Magistrate, after what is called a *Remissness* and *Delay* of two Months, (p. 37.) proceeded against the Person called the *Offender*, in a Manner altogether *illegal* and *unstatutable*; and in short, that he has not acted at all, (p. 41.)

That I may therefore, as far as lies in my Power, obviate these malicious Endeavours of the Writer, and more particularly vindicate the Proceedings of the V. C——r from the unjust Reflections which have been cast upon them, I shall examine each of these three Heads in as clear and distinct a Manner as I am able; and hope I shall first of all be so happy as to make it evident to the World, that the Facts complained of were of a Nature *entirely different* from what the Writer labours to prove; and that the *whole* of those Facts said to be confessed, were *not* confessed by the Party accused.

Secondly,

Secondly, That they were *not* laid before the chief Magistrate in the Manner which he would have them thought to be laid in.

And, lastly, That the Magistrate, after a *due* and *careful* Consideration of every Circumstance of the Offence, has proceeded in a *legal* and a *statutable* Manner against the Person called the *Offender*. I will therefore, without further Preface, give the World a true State of the Case itself, with all the Circumstances attending it.

W. L. the Person accused, was always a Lover of musical Entertainments, and commonly made one at the Weekly Meeting for that Purpose. There he often took Notice of the Singing of *W. R.* the Informant, a Chorister of *Magdalen-College*. In *July* 1750, *W. L.* met *W. R.* in the Street; he invited him to his Chamber, to sing. Three Days afterwards (at three o'Clock in the Afternoon) the Boy came; immediately upon his coming in, *W. L.* sat down to his Harpsichord, and played a Bass, while the Boy sung an Anthem. When he had done, *W. L.* commended his Singing, and gave him a Kiss, and bad him sing it once more; which he did. He then, upon hearing that he wanted to see a Relation out of Town, gave him *two* Shillings, to hire a Horse for that purpose; and bid him come again at his Return, and fixed the Time. At the Time appointed (at three o'Clock one Afternoon) the Boy came again; *W. L.* coming home almost at the same Instant, met him at his own Door,

from the Key-hole of which *W. L.* took out a Paper, supposing it to be the Note of Directions where to be found if wanted, which he himself had left there a few Hours before, according to his usual Custom. But the Paper was not the same, and the Contents of it were indecent, relating to *Women* (a Trick which he had been served before, and has been since) which, nevertheless, he was so little upon his Guard as to read aloud, in the hearing of the Boy before he tore it. Upon coming into the Room, *W. L.* sat down, in haste, to finish a Letter which then lay upon the Table, whilst the Boy amused himself with turning over the Leaves of *Cropper's Anatomy*, which lay upon a Desk. *W. L.* having finished his Letter, got up; and, whilst the Boy was looking over the Cuts, very imprudently turned to the Beginning of the Book, where there are the Portraits of a Man and Woman, and asking him how he liked the *Woman*, pointed himself to the Figure of *her*. About this Time as they were going into the Musick-Room to sing, somebody knocked at the Door: *W. L.* seeing a Gentleman who wanted him upon Business, bid the Boy come and sing some other Afternoon, when he should have more leisure; upon which, after having had *one* more Shilling given him, the Boy went away, and never came into the Rooms again.

This then is the Whole of every Thing that passed in the Rooms; and I doubt not but the Reader will be much surpris'd in not meeting
with

with a *Circumstance of another Kind*, which, from the scandalous Representation the Writer has given of it, he must have imagined to have happened *there* likewise. But the Truth of that is as follows. *W. L.* going one Day from Dinner in the College-Hall of *Cb—Cb—* into *Peckwater* Quadrangle, overtook the Informant, who was accidentally before him, and while they were passing together under the Arch, *W. L.* was obliged to stop *meiendi causâ*; (a Circumstance particularly mentioned in the Boy's Paper) and in the Sight of two *Women*, who were coming on, said in a very unguarded Manner, :---*Velle se unam ex iis*---: What is added therefore in the *Inquirer's* State of the Case (p. 36.) viz. *Dicto W. R. palam exhibens* (taken I suppose from the Words in the Boy's Paper, *and shewed it him*) must in the Sense there insinuated undoubtedly be false. The Boy was then passing on; whether he turned his Head or no, is little to the Purpose. Nay, supposing he really had turned his Head, it would have been in Favour of *W. L.* because he expressly says *W. L.* stopped under the Arch *meiendi causâ*.

This then is a true, just, and faithful Account of every Thing which happened; every Thing which the Person accused *really* confessed: All the other * Circumstances mentioned

* The other Circumstances that are flung into the Boy's Paper, are; that he took the Boy upon his Knee, and kiss'd him (which was nothing more than the Kiss given at the Harpsichord, in the Manner related;) that he kiss'd him again when he went away;

tioned in the *cook'd up* Paper, he did, when before the Magistrate, absolutely deny ; which Circumstances, however, I will here subjoin, that the Reader may see the Whole of every Thing that has been brought against him.

But it is now Time to see the Manner in which the *Inquirer* has been pleased to state the Case ; which, considering he has solemnly asserted (p. 48.) that he has not been guilty of one *designed* Error, or of having given an *unjustifiable* Turn to a *single* Fact, may by the Reader be reasonably supposed to be *fair*, and *impartial*. The Case then as stated by him, is as follows, (p. 36.)

Dictus W. L. dictum W. R. adsectatus fuerat ; cum blandâ et lascivâ Oratione sollicitaverat ; Suaviloquentiâ, Bassis, Donisque attentaverat (Pudendum &c. denudans, dictoque W. R. palam exhibens) aliâque, &c. &c.

And for the Benefit of the *English* Reader (p. 31.) *Kiss and soothe, hug and fondle with, treat, cajole and bribe, talk and act alone with him.* What a fair, what an impartial Representation is this ! How extremely just and equitable it is, to draw up a Case in this Manner, in order to have an *Opinion* upon it. For, (to be a little

away ; that he gave him a *fourth* Shilling ; that when some Woman was talked of, he said again, *Velle se*—— ; that instead of pointing himself to the Figure of the *Woman* in *Cowper's* Anatomy, he made the *Boy* point ; that he charged him never to tell any Body he was at the Room ; that he said he would give him some Money, and Tea, and Plumb Cake, if he would come some *Night* next Week. (The Word *Night* seems foisted in, in order to make it more inviolent.)

particular) the Writer has first of all taken Care to collect the several Incidents which fell out accidentally at *different* Times, and fling them all together in one View before the Eyes of the Reader, as if they happen'd at the *same* Time : He has afterwards by the Help and Assistance of the *Old Roman* * *Language* taken Care to pick and cull out a few choice Expressions from the civil Law Writers (viz. *Blandâ Oratione sollicitaverat, Donis attentaverat, &c.*) which together with a few *Citations*, † in order to illustrate and explain the Meaning of each, lest they should not be *properly* understood, must necessarily make such an Impression upon the Mind of his Reader as he would desire to have made. But there is *one Circumstance* of a *different* Kind, which he has taken Care to represent in the blackest Manner : *That* I mean which is flung within a Parenthesis. From the hideous and frightful Colours with which it is *there* painted, what will a Reader think, what

* The Writer might expect perhaps another Advantage to arise from making Use of the *Old Roman* Language, *viz.* That the Expressions taken from the *Civil Law*, tho' conveying the worst Ideas to the Mind of the Reader, would not be look'd upon as libellous in the Eye of the *Common-Law*.

† *Si quis pretextatum, &c.* (p. 13)

It is very hard to conceive what the Writer aims at by this Citation, unless, as I said before, it is intended, to explain the several Latin Terms, which he makes Use of in stating the Case : (p. 36.) for if he means to insinuate, that a civil Action may be maintain'd here by a Father in his own Name for the Solicitation of his Child's Chastity, because that Method is pointed out to us by the Laws of *Old Rome*, he may as well infer, that an *English* Father, as such, has Power over the Life of his Child, because, by the Laws of *Old Rome*, the Father had such a Power.

will he imagine? What, indeed, can he think or imagine, but that it happen'd in *private*; in the *College Chamber*; that it happen'd when *Donis attentaverat, blandâ Oratione sollicitaverat, &c.* He will hardly believe what was really the Case; that the *sole* Indecency which the Party was accused of, was saying some unguarded Words while he was accidentally stopping under the Arch *meiendi causâ*, in the open College; at Noon; in Publick; in the View of *Women* passing by, as has been before related. The Reader, I say, will hardly believe this; neither would the good and humane Writer have him believe it: His Story would not then have been uniform and complear; for tho' he has not offer'd to charge the Party with any open Violence or actual Attempt upon the Person of the Informant, he has taken Care, nevertheless, from the dark Disguise which he has flung over every Fact, to raise Ideas of a very similar Nature in the Minds of his Readers. And what is still more extraordinary, not content with bringing this black Charge against him, he has made him confess the *Whole* of it. Was this the Case then? Will the Writer affirm it to be so? Will he, I say, aver, that he confessed, *Quod cum blandâ Oratione sollicitaverat; Donis attentaverat; pudendum, &c. dicto W. R. palam exhibuerat*; And again, that he *bribed, sooth'd, bug'd, fondled with, treated, cajoled the Boy*; Should an Author who sets out with Professions of the strictest Veracity, venture to affirm such Fallacies?

But

But to proceed to what I intended, in the second Place, which was to show the Reader, in what *Manner* and by *whom* these Facts were laid before the chief Magistrate.

Concerning this, the *Inquirer* goes on, in his usual candid Manner, and endeavours to impose upon the World the following Account. (p. 9.)

W. L. is accus'd before the proper Magistrate, &c. W. L. appeareth for the first Time, &c. and confesseth the Commission of the Facts alledged against him; and more particulary (p. 36.) confessed all and singular the Facts, &c.

The Reader, by this, can understand nothing less than that *W. L.* appeared before the proper Magistrate for the first Time, in Consequence of a *previous Accusation* laid before the same Magistrate. Which is *not true*: But, on the contrary, *W. L.* as soon as he heard the Report, which was not 'till the 8th Day of *March*, near *eight Months* since the Boy was last at his Room, went of his *own Accord* to the proper Magistrate, without any *previous Summons*, or Accusation made, in order to vindicate himself; for which Purpose he desired the Party might be sent for to produce his Charge: * For the

C

Truth

* The Boy delivers an Account in Writing the same Day, viz. on the 8th of *March*, 1751, which had been *lying in* ever since the *Debate* preceding; at the Foot of which, the Boy acknowledges, he had given out *five Copies*: There had been handed about the University before any Account had been laid before the V—c C———r. The Boy, after delivering his Pocket Paper, was asked, whether he had any one Thing more to say or alledge against the Party accused? To which he positively answered, *No*. He then went away, and left the

Truth of this, the proper Magistrate is appeal'd to. That *W. L.* likewise confest'd the Commission of all the Facts, is as *untrue*, (as I said before) and for this also the proper Magistrate is appeal'd to. So that the Case is *not*, as the Writer affirms it to be (p. 10.) *fairly and honestly represented*. I would beg Leave to observe in this Place, that it is not very probable *W. L.* would have been his *own Accuser*, if he had been conscious to himself of any Thing but having said a few indiscreet *Words*; if he had imagin'd that he could have been suspected of harbouring any evil *Thought* or *Intention*. In *that* Case, he would certainly have taken very *different* Steps: He knew the Boy was poor, his Family necessitous; he might, without any great Difficulty, have *paved* and *smoothed* the Way in *private*, and then have brought the Affair to a *public Hearing*, and *openly* asserted his Innocence.

In this frank, voluntary Manner did the Party accused lay his Offence *himself* before the chief Magistrate, the very Instant almost that he heard of the Rumour prevailing. But alas! the very *Method* which he made Use of to clear and vindicate his Character, has proved the *Cause* of all his Misfortunes. There was now an Accusation formally laid before the proper Magistrate; (which perhaps otherwise

ten Days afterwards, in the *Absence* of the Party accused, was sent for, to attest what he had before given in Writing. He was neither *then*, or the Time *before*, *cross examined* or *questioned* by the Party accused, concerning the Particulars which he had so given in.

would

would never have been laid before him) the Pocket Paper which the Boy delivered, tho' containing many Things entirely *false*, and positively *denied*, had, however, some *few* Circumstances in it which were ingenuously confessed, and which, strictly speaking, amounted to an Offence *contra bonos Mores*; the Magistrate, by Virtue of his Office, was obliged to take Notice of it, and act in such a Manner as the Statutes of the University required: Let us see then in what Manner he *has* acted, and whether his Proceedings have not been *conformable* to those Statutes; a thorough Inquiry into, and a full Examination of this being the last of the three general Heads.

The Magistrate, after taking a proper Time * to consider the Nature of the Offence, and duly and carefully inquire into every Circumstance of it, sent for the Party accused, upon the 10th of May (full *two Months* since the Paper had been first laid before him) and in the Presence of the public *Register* and both the *Proctors* of the University, who are the proper Representatives of the Masters in Convocation, put the Statute † (B) in Force against him, by accepting of his *voluntary Oath*, to assert the Innocence

* This cautious and prudent Method of proceeding in the Magistrate, is by the Author of the *Inquiry* very *modestly* styled a *Remissness and Delay which gave Offence.* (p. 37.)

† The Reader is desired to take Notice, that *this Statute* regards Offences of a much *higher* Nature than the *present*, which, tho' taken in the *worst* Sense, and aggravated in the *highest* Manner, cannot be *made* to amount to the Suspicion of a *Crime*, but the bare Suspicion of an *Intention only*.

of his *Intentions* and his Bond of 500*l. de bene se gerendo in posterum.*

It might naturally have been expected, that a *statutable* Sentence, put in Force against him by the proper Magistrate, whose Business it was *solely* to execute that Sentence, must have satisfied every reasonable Member of the Community; (and every *reasonable* Member, I believe it has satisfied) but as *the Offender had still the Liberty of walking within the Walls of Sion,* (p. 31.) *other Methods* were to be attempted. In a few Days then, after the Execution of the Statute above-mentioned, three Members of the Convocation waited upon the Magistrate, signifying their great Displeasure with his late Proceedings; but not choosing, for Reasons best known to themselves, to produce any *Remon- strance*, as intended to be presented to him, (tho' it was at that Time publickly handed about the University,) the Answer of the Magistrate to these Gentlemen was, (for the Truth of which he is himself appeal'd to)

“ *That he had done every Thing which the Statutes empower'd him to do; that, if they were not contented with what had been done, the Person of the Offender lay open to the Laws; and that he was ready at any Time to bind him over to the Assizes, upon Condition, that one or more of Them would be bound over in a proper Recognizance to prosecute.*”

To this there was no Reply made.

I would ask the Reader, whether such an Answer as this, looked like an Endeavour in the
Magi-

Magistrate to *screen* the Person of the Offender? Whether a Magistrate, after having done every Thing which the Statutes impower'd him to do, could possibly have given a *fairer, juster, more satisfactory* Answer? But alas! it was so far from having procured any *Satisfaction*, that on or about the 1st of *July*, the Paper called the *Remonstrance*, signed by some Members of the Convocation, was at *last* presented to him, complaining of a *private, summary, and illegal* Method of proceeding in regard to the Offender; and praying that the Accusation might be laid *de integro*, before the Convocation upon the Statute (*A*) (otherwise the Party accused could not be *expelled and degraded*). To the Gentlemen who presented this *Remonstrance*, the V--- C-----r was pleased to make the following Answer; (for the Truth of which he is again appeal'd to.)

“ *That, he had been extremely ill, as they very well knew, and was still so much out of Order as not to be able to venture Abroad; but as soon as he could go out, he would consult the Heads of Houses concerning their Remonstrance, and return them an Answer.*”

What Treatment might a Magistrate reasonably have expected to have met with, after having given such an Answer as this? Should not a proper Time have been allowed both for the Recovery of his own Health, and the Return of the Heads of the several Colleges? (many of whom were then going out of Town, on Account of the Vacation Season) But was this

this the Case? No: Even before the *first* could happen; within a *Fortnight* after the Answer had been given, our Writer (for I would by no Means reflect upon any Body else) signified to the World * the speedy Approach of his *Serious Inquiry*; in which (p. 30.) in a most *abusive* Manner, he has had the Assurance to reflect upon the Magistrate for not performing his Promise, when he really had not time given him to perform it.

This then is a very exact and faithful Account of every Thing which was publicly transacted, from the Time in which the V---Ch-----r first executed the Statute, to the present. But I must be more particular in Regard to the *Nature* of those Proceedings which the V---Ch-----r had upon the Statute (B.)

Of the several Objections then, which the Writer is pleased to make to those Proceedings, the following is that which ought first to be taken Notice of.

He says, (p. 18.) *That it may reasonably be doubted whether the Statute (B) was ever Law; it being one of those procured by Archbishop Laud, in the Time of Ch. I. and never ratified by Act of Parliament.*

But before he had *doubted* in this Manner, he would have done well to have considered *which* of the University Statutes made before *Laud's* time, ever were confirmed by *Act of Par-*

* Care was taken that the Advertisement for the Publication of the *Serious Inquiry* should appear the very *Day* the *Affizes* began at Ox-----d.

liament, and *when* and *by what Act* they were confirmed : And if they were ever so confirmed, what Authority the Convocation now has to *alter* or *explain* them, or to make any *Additions* to them. That the *University Charters* have been *confirmed by Act of Parliament* is true ; but I am afraid the Writer knows not the Difference between the *University Charters* and *Statutes*.

Taking no further Notice then of these *Doubts*, I shall proceed to another more *material* Objection, which is indeed *the Point* upon which almost the *Whole* of his Arguments turn, in order to prove those Proceedings null and void ; and that is the *Illegality* of the *Purgation Oath*. First, As the *Oath* of the *Party* has not been accompanied with *those of Compurgators*, (p. 12.) and Secondly, As the *Oath* itself has been *repealed* by *Stat. 13. Ch. II.* (p. 41.) Now, if it shall appear to the Reader, that the *Oath* itself, as mentioned in Statute (*B*) required *no Compurgators* ; and also, that it is *not repealed or void*, in cases where the *Party* *voluntary* offers to take it, as in the *present Case* ; but *only* so where he is *charged or compelled* to take it, what becomes of those Arguments ? As so much then depends upon this *purgation Oath*, I will beg the Reader's patience, while I am a little particular in regard to the *Nature* of it.

The *Citations* made by the Writer from the *Canon Law*, (p. 11, 12, 15.) can be nothing to the Purpose, unless he had produced any

Instance that this *University Statute*, which impowers the V--- Ch-----r *Purgationem indicere*, had ever been expounded to mean the *Canonical Purgation by Compurgators*; the Statutes of the University being no more to be expounded by the Rules of the *Canon Law* than by those of the *Civil* or *Common Law*. That Archbishop *Laud*, the supposed Maker of this *Statute* did not intend to make *Compurgators* necessary, is probable; first, from his not *mentioning* them; secondly, from his Caution against the Perjury only of the *Party himself*; and thirdly, because the Practice of making *Purgation by Compurgators*, which had been gradually upon the Decline, ever since the Reformation, was at the Time of making this *University Statute*, very much disused, if not quite laid aside by the *Ecclesiastical Courts* themselves, as a Thing very odious and grievous to the Subject in general, and which, in Cases of *Clerks* convict, had been expressly condemned and taken away by an Act of Parliament made in the 18th Year of Queen *Eliz.* for the avoiding of sundry Perjuries and Abuses, as that Act expresseth it. But notwithstanding this *Purgation by Compurgators* was thus disused or laid aside, the *Ecclesiastical Courts* still retained another Kind of *Purgation* by the Oath of the *Party himself*, which had been propagated by, and exceedingly flourished under the *high Commission Court for Ecclesiastical Causes*. For when Queen *Eliz.* in order to establish the Reformation, found it necessary to procure the Authority of Parliam-

ment

ment to enable her by Letters Patents to appoint Commissioners to execute *Ecclesiastical Jurisdiction*, in order to deprive the *Popish* Bishops, who would not deprive themselves, nor their Clergy who were popishly affected, these Commissioners, by Virtue of a Clause in that Act of Parliament, (1 *Eliz.* Cap. 1.) whereby it was enacted, *That the Commissioners to be appointed by the Queen or her Successors should have full Power and Authority, by Virtue of the Act, and of the Queen's Letters Patents, to exercise, use and execute all the Premises, according to the Tenor and Effect of the said Letters Patents, any Matter or Cause to the contrary in any wise notwithstanding*; supposing that they were to execute their Commission *not* according to the old Law and Usage, but according to the Tenor and Effect of the Queen's Letters Patents, as the Act expresses it, easily procured Commissions from that Princess, fill'd with very extraordinary Powers before unheard of, particularly with a Power *to order and award Fine and Imprisonment, and to take such Order for the Redress of Offences, as to their Wisdoms and Discretions should seem most convenient*; and then comes a Clause in the Commission, whereby they are authoriz'd to call before them *every Offender or Offenders in any of the Premises, and also such Witnesses, &c. as they should think meet to be call'd before them, and him or them to examine upon their corporal Oaths, for the better Trial, and opening the Truth of the Premises.*

The Commissioners being thus armed with

these extraordinary Powers, began to exercise them with Severity enough ; they fined and imprison'd, and *compell'd* not only Persons accused, but those that were barely *suspected* of any Offence, to answer upon *Oath*, no. the *Canonical Oath* with *Compurgators* which the Commission does not mention or allude to, but an *Oath* something similar to the Defendant's Answer in Chancery at this Day ; but different in these two Respects ; first, in that the Party was obliged to answer upon *Oath* before the high Commissioners, tho' his Answer might tend to charge himself with a criminal Offence ; secondly, The Party was obliged to answer upon *Oath*, in Cases of bare *Suspicion*, without any Accusation or Complaint, if the Commissioners thought proper to proceed against him *ex Officio mero*. These extraordinary Proceedings produced many sharp Contests and Disputes, concerning their Validity, in the Temporal Courts, even during the Reign of Queen *Eliz.* herself, and during the Reigns of *James I.* and *Charles I.* The common Law Books are full of Cases concerning the Validity of these Oaths, which are there called *Oaths ex Officio*, in Contradistinction to the *Canonical Purgation Oath* with *Compurgators*, then disused, and so little thought of, that the Act of Parliament, which in the 17th of *Charles I.* about five or six Years after the Time *Laud* gave his Statutes to the University, *repeal'd* this Act of *Eliz. I.* for erecting the high Commission Court, and abolish'd this evil Practice of *compelling* Persons to

to accuse themselves upon *Oath*, does not so much as mention the *Purgation Oath with Compurgators*, but enacts, for the remedying the Abuses which had been committed, That no *Archbishop, Bishop, or Vicar General or Ordinary whatsoever, nor any other Spiritual or Ecclesiastical Judge, &c. shall ex Officio, or at the Instance, &c. of any other Person, &c. tender give or minister any corporal Oath, whereby he or she shall or may be charged or obliged to make any Presentment of any Crime, Offence, Delinquency or Misdemeanour, or any Neglect, Matter or Thing, whereby, or by Reason whereof, he or she shall or may be liable or exposed to Censure, Pain, Penalty or Punishment whatsoever.* What I would infer from hence is, that if the *Purgation Oath with Compurgators* had been in Use at the Time when this Act of 17 Ch. I. was made, it would have been mention'd and abolish'd by Name, as being an Evil attended with greater Mischief, and productive of more Perjuries than the simple Oath of the *Party without Compurgators* was; it, at least, would have deserved to have been mention'd as much as the Oath of a Churchwarden or Sydeman, who were charged to present Offences upon Oath *without Compurgators*. And Bishop Gibson himself, that great Advocate for Ecclesiastical Discipline, and the Old Ecclesiastical Law, seems to admit that the Practice of *Purgation by Compurgators* declined soon after the Reformation; for tho' he asserts, that Examples of it were frequent before the Reformation,

and that it did not continue afterwards, of which he produces some Instances, yet he does not produce a *single Instance of the Continuance* of it in *any Ecclesiastical Court* after Archbishop *Parker's* Time, who died in 1575. As therefore the Practice of *Purgation by Compurgators* declined in the Ecclesiastical Courts soon after the Reformation; as it was expressly abolish'd by Act of Parliament, 18 *Eliz.* in relation to *Clerk's* Convict, for *avoiding sundry Perjuries and Abuses*; as the Commissioners for Ecclesiastical Causes, and in Imitation of them the other Ecclesiastical Courts had substituted *another Oath without Compurgators*, which they were strenuously endeavouring to establish during all the Time Archbishop *Laud* was in Favour and Power, and before; it must be left to the Reader to determine, whether it is not more probable, that the Archbishop, by the Statute he gave to the University, did not intend to introduce there the *Oath without Compurgators*, which was then in common Use and Practice, rather than to revive the old and obsolete Custom of *Compurgators*, which was *not* then in Practice, but had been long disused and generally condemned.—There being some Doubt, whether this Statute of the 17 *Cb.* 1. did not take away all ordinary Power of Coercion and Proceedings in Causes Ecclesiastical, it was *repeal'd* (excepting as to what concern'd the *high Commission Court*) by the 13th *Cb.* II. *Cap.* 12. with a Proviso, nevertheless, that it should not be lawful for any *Ecclesiastical*

ecclesiastical Judge to tender unto any Person the *Oath* usually call'd the *Oath ex Officio*, or any *Oath*, whereby such Person may be *charged* or *compelled* to confess or accuse, or to purge himself of any criminal Matter or Thing; which comes now to be consider'd.

(P. 14.) “ *By the Statute Law of this Realm, it is not lawful to administer any Oath, &c. whereby the Person may be charged or compelled to confess, accuse or purge himself,*” &c.

One would think the Words of this Act were plain enough not to be possibly misunderstood; and that a Person coming *voluntary*, and requesting *Leave* to be permitted to make *Oath* of his Intentions, could never by any Sophistry be taken to be a Person *charged* or *compelled* to make that *Oath*, so as to found a publick Accusation against a Magistrate for *charging* and *compelling* him to take that *Oath*. But Zeal against the Magistrate might possibly make the Writer overlook or not consider the Force of the Words *charged* or *compelled*. And yet he was sufficiently put in Mind of them by Bishop Gibson's Comment on this Act; the most *immaterial* Part of which he has transcribed into his Pamphlet, but has prudently omitted the *material* Part of the same Comment upon the Words *compelled* to purge; upon which the Bishop says, *So that any Person may still offer himself voluntarily for the clearing of his Conscience.* Cod. Jur. Ang. Vol. 2, p. 1088.

But I will go a Step further, and venture to assert, that the *Party* has not only the Liberty
of

of voluntarily taking his *Oath* to assert his own Innocence ; but that the V--- C-----r has *still* the Power left him *Purgationem indicere*, as the Statute (B) is no ways set aside, or indeed at all affected by the Stat. 13. Ch. II. which Act relates only to *Bishops and other Ecclesiastical Judges*, and not to the Chancellor or V. Chancellor of either of the *Universities* ; and I will likewise venture to assert, that this Opinion concerning the Power which the V. Chancellor still has *Purgationem indicere*, will be readily subscribed by every good common Lawyer in the Kingdom, except the *Opinion Giver*.

The Reader will, I am afraid, think I have been tedious ; yet, I hope, I have clearly show'd him, that the first Part of the Statute (B) is *still* in full Force, and that the *Purgation Oath* was therefore *legally* taken. As to the *Validity* of the *second Part* of the same Statute, I have no Occasion to say any Thing, the Writer himself being pleased to allow it, tho' *unwillingly*, in the following Manner : (p. 45.)

“ I am apt to conceive, as yet at least, that the Statute (B) as to Part of it, is still in being, and therefore the V--- Ch-----r, if he will be strict, may by *Virtue* thereof, for the Reasons specified, claim to himself an exclusive Jurisdiction.”

But tho' he allows of the *Validity* of this latter Part of the Statute, he *objects*, however, to the *Manner* in which it was executed ; the Magistrate having not acted up strictly to the *Letter* of the Words *Cautio Fidejussoria* ; as he

has accepted of the *Party's* own Bond *only*, without *those* of *Fidejussores*.

The plain and short Answer to which Objection, is this; That the *Magistrate* never thought proper to demand any *Fidejussores* of the *Party* accused, because he imagined there was neither Danger of the *Party's* *flying from Justice*, or of his not being *responsible* for the Security given. In either of which Cases he would certainly have kept up to the *Letter* of the Statute. They were *not* given then, because they were *not* demanded; if they *had* been demanded, they *would* have been given; and whenever they *are* demanded, they *will* be ready to be given; notwithstanding the *insinuated Difficulty and Expence* in procuring them. (P. 43.)

But there is still *another* Objection of no less Weight than the *former*, that the Writer has to the *Place* in which the Statute was executed against the Offender; *viz.* That the Proceedings were not in *open Court*; in the Eye of the University; but at *home*; in *private*; in the V---Ch-----r's own Lodgings; that in this, the *Magistrate* has not followed the Rules laid down by the Writers in *Canon-Law*.

(P. 15.) *Se debet publicè purgare qui apud Populum, &c.*

Absolutio privata Criminis Infamiam non tollit.

By these learned Citations (which as they are from the *Canon-Law* are nothing to the Purpose;) the Reader is gradually prepared for those

those open Reflections, which are flung upon the Magistrate (p. 19, 20, &c.) where there is Nothing to be met with but *Closet Lectures*; *Closet Animadversions*; *Skreening of peccant Sons*; with many Expressions of the like Kind. But *what* must I accuse the Writer of in *this* Place; a real *Ignorance* of the Statutes of the University, or a wilful, premeditated Design of *imposing* upon his Readers. If his Fault is *Ignorance* only; I will beg Leave to *inform* him, That the Magistrate has not taken one *single* Step, in regard to his Proceedings, without the utmost Care and Caution; and more particularly, as to what concerns *the Place in which he proceeded*, he has acted in a Manner *strictly conformable to the Statutes*. For the Truth of what I say, I appeal to the *Statute itself* (C); by which he is impowered *procedere in Causis quæ ad Reformationem Morum spectant, non solum in Curiâ sed etiam in privato Hospitio*. But if he was *not* ignorant of such a *plain, full, direct* Statute as this, why has he endeavoured in so shameful a Manner to *impose* upon the World.

The *last* Objection advanced by the Writer, tho' one that seems to have had the *greatest* Influence over him, is the following:

“*That the subsequent Oath of the Defendant, concerning his Intention, cannot set aside the Cogency of his previous Confession* (p. 10.) *and therefore that he ought not to have been discharged without a legal Censure for such confessed Offences.*”
(p. 39.)

I believe it is easily seen, that the Force of the Argument *wholly* turns upon the *Confession* that was made by the Defendant, which, as I said before, no ways amounted to what it was *said* he did *confess*. He *confessed* indeed, that tho' *many* of the Circumstances mention'd in the Boy's Paper were absolutely *false*, some *few*, however, were true. And for such *Confession*, it must be owned, that he has not, as yet, been *expelled*; that he has not, as yet, been *degraded*; (a Sentence with which he has sufficiently been threatned (p. 21, 23, 29, 31, 37, 38, 39, 45) But if the Reader will be pleas'd to consider, that even the *humane Writer himself* seems, at last, to acquiesce tolerably well in the *Punishment*, which, he says, would necessarily have arisen from the *Expence* and *Difficulty* of procuring *Fidejussores*; if he considers again that this *Punishment* may be inflicted whenever the Magistrate *pleases*; and *lastly*, if he considers, which is much more to the Purpose, what the Defendant has *really* undergone; what a Man in a *publick Profession* must *actually* have suffered from the *many Methods* which have been made Use of to *ruin* and *destroy* him; I believe he will readily agree with me, that the *Difficulty* and *Expence* in procuring *Fidejussores*, as taken Notice of by the Writer, are Nothing comparable to *those Difficulties* which he has *already* undergone; to *those Losses* which he has *already* met with: So that the *Punishment*, when justly consider'd, will appear to every *reasonable* Man to be greatly *more* than what is adequate to the Offence.

To recapitulate then a little what I have said : If I have been so happy as to remove the *Doubt*, which the Writer had to the *Legality* of the *Statute itself* (B); if I have shown that the *first* Part of the same Statute, in regard to the *Purgation Oath*, imagin'd by the Writer to be *null and void*, is *legal and valid*; if I have shown, that the *latter* Part of the same Statute, (allowed, even by the Writer himself, to be in full Force) tho' as yet not *strictly* and *literally* complied with, for the Reasons above-given, may as *strictly* and *literally* be complied with, whenever the Magistrate pleases; if I have shown likewise, that the *Place in which* the Statute was executed against the Party accused, was the *proper Place* allowed by the *Statutes* for the Execution of it; and *lastly*, if the Punishment *already inflicted* upon the Person call'd the *Offender*, may, with great *Justice*, be looked upon as very *heavy and grievous*, and fully adequate to the Offence; *Why and wherefore* must all these *statutable* Proceedings had full *five Months ago*, be entirely set aside; and the Case laid *de novo* before the *Convocation*, upon the Statute (A), which Statute no ways shows the *Convocation* to be a *Court* that has *original Jurisdiction* to try the Offence, and which *must* be shown, before it can be affirmed, that the Offence ought *originally* to be laid before it. If it is said, that the *Convocation* has *original Power* of *expelling* and *degrading* its Members; I answer, so has *every Corporation* in the Kingdom; but that does not prove them therefore

to be *Courts* ; (and in Fact very few, if any of them, are so) much less does it prove them to be *Courts* that have *Jurisdiction* to try the Offence, for which they expel and degrade ; (and without such *Trial*, and *Conviction* by a due Course of Law, any *Expulsion* or *Degradation*, will, I believe, be deemed illegal.) That the *Convocation* is no Court of *original Jurisdiction* is easily proved from its wanting those many *Incidents*, which are necessary to constitute, or even to keep up, the common Forms and Appearances of *administring Justice in the first Instance* ; viz. *The Power of compelling Defendants and Witnesses to appear* ; *Officers to execute its Process* ; and many others, with which there is no Occasion to trouble the Reader. That it is the *supreme Court of Appeal*, is most undoubtedly true ; but if it had likewise *original Jurisdiction*, its Power would be *superior to that of the House of Lords*, which, with all its *Authority*, lays no Claim to *original Jurisdiction of the most minute Cause in the first Instance* : The Reason of which is plain ; for if it had such *original Jurisdiction*, the Party would be thereby prevented of his *Appeal*, and might be subject to an *arbitrary Determination in the first Instance*, without Redress : Which is an Evil unknown to our Constitution, except in Cases of a *visitatorial Power* ; and even in those Cases, an *unappellate Tribunal* some Years ago, was thought a *monstrous Absurdity*, an *intolerable Grievance* ; but now-a-days a *supreme Court with original Jurisdiction* is looked upon

as no such bad Thing. *How Times and Seasons vary!*

I hope, what I have said, concerning the *Jurisdiction* of the *Convocation*, cannot possibly give Offence; no Man having a greater Regard for that learned Body than myself, or more heartily wishing, that it may ever continue in full Possession of its Rights. I would only endeavour to show the Reader, that the V---Ch-----r, in taking Cognizance *himself* of the *present Case*, has acted *consistently* with the *Duty of his Office*.

It is easy from hence to *infer*, that those *three Cases*, (viz *Thist---le*, *Sel---n*, *Dun---be*,) mentioned by the Writer (p. 23) as having been *originally* laid before the *Convocation*, can never serve as *Precedents* for *others*, to be laid in the *same Manner*, for Want of a due Foundation in *Law* for *so* laying them. And this, I believe, the Reader will readily allow me, without *inquiring* into the *Merits* of the several Cases. As to the *Similitude* of *Offence*, which the Writer is pleased to mention, I should be glad to ask him the *Meaning* of what he says, and what he would *insinuate* to his Reader thereby. Can he, in the first Place, say, there is any *Similitude* between the *three Cases themselves*? Will he say there is any *Similitude* between the *two last* and the *present Case*? And dare he say there is any *Similitude* between the *first* and the *present Case*, altho' he has had the *Assurance* (p. 45) to call it a *Precedent*? Why then will he make Use of such *scandalous Insinuations*?

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There is one Argument of the Writer's still remaining, which, as it is of a Nature *different* from the rest, I have hitherto purposely omitted taking Notice of.

The Writer then, by a long and tedious Chain of *Interrogatories*, which he thinks invincible, endeavours at last to prove, that a Member of a *College* because he quits that *College*, must therefore be immediately forced to quit the *University*: But suppose his *Affertions* should be *false*; or, if I may have Leave to use the Expression, the *Links* of which his Chain is composed, should *fail*, what becomes of the *Argument* that depends upon them? For instance, it is confidently asserted by him (p. 27.) "*That it was expected he should instantly resign his Freehold in the Society to which he belonged, with an Intimation, that if he complied not, &c. they would proceed to a formal Expulsion of him.*"

This Assertion is *absolutely false*; for the Truth of what I say, the *local Magistrates* (as the Author is pleased to stile them) of the College are *appealed to*; and I will take the Liberty of saying, it would have been great Indiscretion in any Magistrate to have given such an *Intimation*. As to the Question that immediately occurs, *why then did he resign?* it is nothing to the Purpose; I shall answer it only by asking another Question or two. Does it follow from his having *resigned* without any *Intimation* of an *Expulsion*, that he must *necessarily* have been *expelled* if he had *not resigned*? Could any College in Ox——d, excepting Ch---

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Ch—— (I put the Question very *fully*) have expelled one of its Members for a *like Offence*? If *Ch*--- *Ch*--- then had proceeded so far as *Expulsion*, (further than which they could not have gone for the most *Capital Offence*) would it not have been because *that College* was governed by *no Statutes* by which such Offence could be taken Notice of? Let me then, as the Writer says, *interrogate a little further*. Supposing he had *actually* been expelled a *College*, because there were *no Statutes* belonging to it that could take Cognizance of his Offence, ought he therefore to be expelled a *University* that *had Statutes* to take Cognizance of the Offence, and *which Statutes* had been by the proper Magistrate *put in force against him*? Is there in such Method of arguing as the Writer here makes use of, either *Reason, Equity* or *Common Sense*?

But it is now high Time to take some Notice of the grand Part of our Author's Performance, which he calls (p. 32.) *one Case of Facts fairly stated, with an Opinion upon it, which has had the Approbation of some Gentlemen eminent in the Law, &c.*

Not to say any thing to the fair Stating of the *Facts* themselves (which I have considered *before*) I would ask the Writer what he himself means by this *Case and Opinion upon it*. By a *Case* stated for Advice at *Common Law* and an *Opinion upon it*, one must naturally understand an *Opinion* of some Person *eminent*, or at least *skilled in that Law*; nay, 'tis impossible

possible to understand it otherwise : If therefore, upon Examination of this *Opinion*, it shall appear *not* to be the *Opinion* of any *Common Lawyer*, but of *some Person* who has never read, or at least never understood a Line of *Common Law* ; if it shall appear, that the *Writer* of this *Opinion* is quite *unacquainted* with the first *Principles* of the *Common Law*, and does not *understand* the very *Terms* he makes use of, the *Author* of the *Serious Inquiry* must not take it amiss if he is called upon to explain with what View he has foisted this miserable Stuff upon the World, under the specious Name of a *Case and Opinion*.

The whole Foundation of this learned *Opinion*, is, that the *Oath ex officio* is *illegally taken*, is *flatly against the Law of the Land* (p. 41.) that the *Oath of Purgation* is *repealed* and undoubtedly *void* ; that the V--- Ch-----r has *not acted at all*, &c. and many such Expressions, which the *Opinion Giver* has taken care to repeat often enough for fear his Reader should lose Sight of his main Strength : Now, if this *Oath*, called the *Oath ex officio*, or *Purgation Oath*, is not *illegally taken*, nor *repealed*, nor *void* in Cases where the Party *voluntary* offers to take it, as in the *present Case* ; but is *only* so where he is *charged or compelled* to take it, as has been before shown) what becomes of the whole *Opinion itself* ! it must fall to the Ground ; the *Premises* being false (as the *Writer* knows very well they are) the *Consequences* drawn from these *Premises* must be equally false.

I must beg leave, however, to be a little more particular with some of the Passages of this *Opinion*; I will therefore make a few Observations upon them as they occur; the first of which we meet with in (p. 43.)

“ *If any Information be moved for in the Court of King’s-bench, the Judges, &c. will grant it against the V--- Ch-----r, to oblige him to proceed against the Offender agreeably to the Statutes of the University.*”

I believe the Writer is the first Person that ever heard of an *Information* to oblige a Magistrate to do his Duty. It is true, indeed, that a *Mandamus* will in many Instances be granted for that Purpose; but the Writer does not know the Difference between an *Information* and a *Mandamus*. And how comes the Writer to imagine, that the Judges of the Court of King’s-bench will interpose at all, in order to oblige V--- Ch-----r to proceed agreeably to the Statutes of the University: Is there any one Instance, where they ever did thus interpose? Are there not numberless Instances where they have declared, they could not take any Notice of the By-laws or private Statutes of any *Corporation*? and particularly in the Case of the *King ver. Dr. Holmes*; on a Motion for an *Information* against the Defendant, who was then V--- Ch-----r of the *University of Oxford*, where &c. --that Court declared, that the *University Statutes* were of a *private* Nature, like the *By-laws* of other *Corporations*; and that the

Court

Court of *King's-bench* could not take any judicial Notice of these *private Statutes*.

P. 44. " Any particular Member of the University may move for an Information; this being an *Action popular*; and the Party is said to sue *tam pro Domino Rege quam pro seipso*."

Conjunctive Ignorance! If the Opinion Giver's Labours in the Law had carried him so far as the reading of *Hawkins's Pleas of the Crown*, which is a Book in the Hands of every Student of *one Year's* standing; or if the Opinion itself had ever had the Approbation of *Gentlemen eminent in the Law*, (p. 32.) the *Common Law* I mean; this palpable Absurdity could never have appeared in Print. --- *Informations* (says Serjeant *Hawkins*, in the very Beginning of his Chapter of *Informations*) are of *two Kinds*; first, such as are merely the *Suit of the King*; secondly, such as are *partly the Suit of the King*, and *partly the Suit of the Party*: So that here the Opinion Giver has confounded these *two Kinds of Informations* together, supposing them to be *one and the same Thing*; whereas the lowest *Understrapper* in the Law, knows that *Informations against Magistrates* for the Perversion of male Administration of Justice, are of the *first Kind*, and are always brought at the *Suit of the King only*, who as the *Fountain of all Justice*, is intitled to this sort of Proceeding, to call his Ministers of Justice to account for their Misbehaviour in his *own Name only*: But the second Kind of *Information*, which is commonly called an *Information Qui*

tam, &c. in Contradistinction to the *first*, lies only where the Law prohibits a Thing, as being an Offence against the publick Good in general, *under a certain Penalty*, and gives the Whole or Part of such Penalty to *him who will sue for it*; in which Case, the *Informer or Person suing*, is properly described to be one *Qui tam pro Domino Rege, quam pro seipso prosequitur*. But no Mortal, except the *Opinion-Giver*, ever dreamt that *this second Kind of Information, this Action popular*, could be brought by a *Common Informer* against a Magistrate for Misbehaviour in his Office, for the Recovery of a *Penalty* by no means *certain*, but *variable* at the Direction of the Court, according to the *Nature* of the Case, and *Heinousness* of the Offence, to which Penalty when recovered, or to any Part thereof, the *Informer* himself, or any Person but the *King*, cannot be intitled. --- So unfortunate is the Guess-work of this *learned Gentleman*, as to blunder upon the very Sort of *Information* that will *not lie*, in order to prove, that an *Information will lie*.

P. 44. " May not the present Offender be indicted for a Misdemeanor, &c. He may --- for every Action that violates, &c."

That the Offender may be *indicted* is very true, and so may the most *innocent* Man alive; but can he be *convicted* is the Question, which most concerns you, good Mr. *Opinion-Giver*, or *Author of the Serious Inquiry*, which ever Name you choose; for I begin now to find out that you are *one and the same Person*. The Reason

you give why he may be *indicted*, is a pretty extraordinary one, and shows your *vast Penetration*, which being disincumbred of its *peculiar Manner of Circumlocution*, is neither more nor less than --- that every Violation of Laws is subject to the Censure of those Laws one Way or another. This we knew before, without the Help of your *wondrous Sagacity*. But that this *Censure* must necessarily be an *Indictment*, because every Violation of Laws is subject to *censure* one way or another, is a Consequence, which few, I believe, but yourself would have drawn. That Human Laws will not consider the *Intention* of an Offender, nor question him concerning it, is *not true*; witness the Cases of *Treason* for imagining or *intending* the Death of the *King*, the *Coventry Act*, for *intending* to maim; and a hundred other Instances might be given, where the *Intention* alone constitutes the *Offence*: *Actions*, indeed, are the only Human Evidence that can *prove the Intention*; because a *Human Judge* cannot look into the *Heart*. But still the *Intention* in many Cases constitutes the *Offence*, and incurs the *Punishment*. But admitting the Offender *may be indicted*, the Question then will be, *why is he not?* This Question you, Sir, can very well answer, as it is not possible you should have forgot, when the Clamour was raised against the *Magistrate* for doing *nothing*, as it was called, that the *Magistrate himself* proposed an *Indictment*. *Why* was not this Proposal accepted then? Because you knew that some *better Opinions* than your's

had been taken, which declared that the Actions complained of could not *be made to* amount to any Evidence of an *Attempt*. This Proposal, therefore, of an *Indictment* was rejected, as the Success of it was despaired of, and as it must have put a Stop to the groundless Clamours against the Magistrate, whether it had succeeded or not.

P. 46, 47. “ *Where the Reason of any Case fails, the Case itself, if depending solely thereon, must fail also.*”

Excellent Sense and fine Reasoning! but how to apply it is the Difficulty. --- A Magistrate has the Choice of an Alternative, either *Purgationem indicere*; or else, if he does not choose *that Method*, then to take *Cautionem Fidejussoriam*: The Author says the *Purgation* is taken away, so that the V--- Ch-----r cannot now pursue *that Method*; ergo he cannot follow *the other*. Why? Because where the *Reason* of any Case fails, the Case itself, if depending *solely* thereon (on what? on its own *Reason*, I suppose) must fail also. --- That is, if I understand the Author; the Reason of *Purgation*, failing, *Purgation itself* fails. But if the Author means what he has *not expressed*, that because *Purgation* fails, the *Cautio fidejussorria*, as depending thereon, must *fail also*; the Reasoning then will be thus: The V -- Ch-----r is impowered to take either *Purgation* or *Caution*, as he shall think fit; but he cannot now take the *Purgation*; ergo he cannot take the *Caution*. That is, because the two Powers are given by the same Statute,

Statute, with Election to exercise *one or the other*; therefore these two Powers must necessarily depend *solely* upon one another: And this Way of Reasoning would have held full as well the Day after *Laud's* Statute was made, or at any Time when there was no Pretence of the *Purgation's* being abolished: For suppose a *V---Cb-----r* in those Days had said, I don't think proper to put the *Party* to his *Purgation*, but will take his *Caution*, the Argument then would have been just the same; *viz.* Sir, the *Caution* depends *solely* on the *Purgation*; and as you don't think proper to administer the *Purgation*, you cannot take the *Caution*. But enough of this; for the Author has just before told you (p. 45.) he is of *another Opinion himself*; where (as I observed before) he *cautiously says*, he is *apt to conceive*, that the Statute (B) as to Part of it, is still in being; and that the *V---Cb-----r*, if he will be strict, may, by virtue thereof, for the Reasons before specified, claim to himself an *exclusive Jurisdiction*.

I will no longer detain the Reader with Observations upon this most *excellent Opinion*. The only Remark that I shall beg Leave to make is this; That notwithstanding it has had the *Approbation of so many Gentlemen eminent in the Law* (p. 32.) the Giver of it shows his good Sense in nothing so much as *not setting his Name to it*.

I shall now most willingly hasten to a Conclusion of these Sheets, after making a Remark upon a Passage that occurs in the Paper called
the

the *Remonstrance*, which was presented to the V--- Ch-----ronor about the first of July, 1750.

The Writer says (p. 29.) *that the Presenters of it hope their Request will be thought reasonable on the Condition only, that the Facts in it shall be found fairly stated.* I hope then, they will not take it amiss, that I should call their Request *unreasonable*, if I shall make it appear, that the Facts in it are *unfairly stated*.

It is asserted, *That the Facts complained of were supposed by the Informant to have a manifest Tendency, &c.* By which the Reader can understand nothing less than that the *Informant* declared such his *Supposition* when he was before the *Magistrate*.

This is an Assertion of great Consequence to the *Credit* and *Character* of the *Party accused*; and should never have been advanced in so publick a Manner, if it had not been *strictly true*: But so far it is from having been strictly true, that I will venture to pronounce it *false*. The *Informant*, when he was sent for to appear before the *Magistrate* (for the Truth of which I appeal to the *Magistrate* himself) *never supposed it*; and I verily believe never *thought it*; what he has been *made to think* and suppose since, is nothing to the Purpose.

I have at last gone through what I intended, and hope I have *undecieved* the World in many Particulars, relating *first of all* to the *Facts themselves*, which by the Author of the *Inquiry* have been most *grossly* and *shamefully* misrepresented.

I have in the next Place shown, that the Offence was laid before the Magistrate *at first* by Nobody but the *Offender himself*; that he was *himself* his own *Accuser*; which Behaviour in him, though it might possibly argue a weak and imprudent *Judgment*, must, at the same Time, undoubtedly show an ingenuous and innocent *Heart*.

I have lastly, as far as my Abilities would give me Leave, endeavoured to vindicate the *Proceedings* of the *V--- Ch-----r* (which to every reasonable Man wanted no Vindication) from the *unjust Reflections*, which have been cast upon them by the *Inquirer*; and cannot but think I have clearly proved, that those *Proceedings* were *legal* and *statutable*; and that the *V--- Ch-----r* has, in every single Instance, carefully and justly performed the Duty of his Office.

Did I intend to follow the Example of the vain *Author of the Inquiry*, (p. 48, 49.) this would now be the proper Place for me to acquaint the World, that I am a *Man of Fortune*; that I am out of the *Reach of all Malice*; that *Nobody can hurt me*; with many foolish *Intimations* of the same Sort: And again, that tho' I have particular *Reasons* for not setting my *Name* to the *present Pamphlet*, I may possibly appear at the Bottom of the next, in *propria personâ*; so that I would have him take Care what he says in Answer to it. But as to the empty *Ostentation* of the One, and the idle *Menace* of the Other, I most heartily scorn and
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despise them. Was I a Man of *such a Fortune*, as the *Writer* pretends to, I should be ashamed to mention it in the Manner he does ; and did I desire to *frighten* my Adversary into Silence, I should not imagine any *Threats of this Kind* would ever have the least Influence over him : I shall therefore act in a very *different* Manner, and rid him at once of all Fears of this Kind, by declaring, that I have for ever done with *him and his Writings*. Let him then do as he listeth ; let him dip his Pen in *Gall*, and execute what his *Heart* conceives ; Let him *print, advertise, fill the common News-Papers with Paragraphs*, and circulate his Wit and Malice throughout the Kingdom ; it shall have free Scope ; it shall never either trouble or provoke me. I can assert, with a much *safer Conscience* than he has done, that it is not against *him* I have ventur'd upon the Stage, but that it is in Defence of *Truth* ; in Defence of a *Man*, whose Fault has been *inhumanly misrepresented* ; in Defence of a *Magistrate*, whose Proceedings have been *unjustly censured* : As I have advanced Nothing therefore in these Sheets, but what is most *religiously true*, I hope they will meet with that Reception from the Reader, which *Truth deserves*.

From what has been delivered in relation to the Proceedings of the V--- Ch-----r, the whole of his Conduct has, I believe, been set in so fair and clear a Light, that not a Word more need be said in Justification of it. But concerning the *Person accused*, against whom the Torrent
of

of Prejudices has run so strong, I must take the Liberty of being a little more particular.

That he is guilty of having said some unguarded Words is true: He has Sense to see his Fault, Ingenuity to confess it, and a Conscience to be sorry for it. But that his Fault has been cruelly and wickedly aggravated in order to lay him under the Imputation of what his Nature shrinks at, is as true and certain. If then he is to be censur'd for his real Offence, let him not be prosecuted and condemned on *Suppositions* and *Insinuations*: If he is to be punished for the Words which he has uttered, let him not suffer likewise for the *arbitrary Construction* which his Accusers put upon those Words. Had he been accused of any criminal *Action*, or even the least *Attempt* towards one, by a speedy Recourse unto the Laws of his Country, he might have done himself Justice, and made his Innocence openly appear; but as his *Intentions* only are suspected, no Redress of this Kind can be had: His Case is therefore most particularly unhappy.

It has been said, that notwithstanding the Innocence of his *Intentions*, the Fault of which he is really guilty, goes yet *unpunished*: If this is still said, it will only be by those who know not what his *Punishment* has been; by those who are ignorant of what he has *undergone*. Has he, from some unguarded Expressions, offended against the Laws of the Community to which he belongs; he has given the Satisfaction which those Laws required. Has his past Behaviour,

haviour, in some few Instances, been imprudent ; he has given ample Security for his future Conduct. But this alone has not been deemed sufficient, the Chastisement of his *Alma Mater* has been looked upon as nothing. He has been drove and persecuted *odiis novercalibus*. No Methods have been omitted, no Endeavours left unattempted, to blast and stigmatise him ; to ruin and destroy him. For several Months together, almost without Notice on his part, he has been loaded with as much *Malice* as the basest Imaginations could furnish, as much *Calumny* as the foulest Mouths could utter. The Voice of Fame has been employed in sounding forth and swelling the ignominious Tale: The *common News-Papers* have been the Channels to convey it throughout the Kingdom ; and least the Force with which this *open Artillery* has been played off should not be sufficient, he has been undermined by other more *hidden Springs* and *Machinations*. His Character has been sapped by Engines of a more *infamous Nature*. ANONYMOUS LETTERS have been sent to different Places and different Persons, in order to alienate the Affections of his best and dearest Friends, in some of which he has been charged not with *Words* only, but *Facts* ; not *Intentions* only, but *Crimes* of the most horrid Nature. These are the Arrows which have for a long Time been shot at him in the dark, and have wounded him in the deepest Manner.

Whe-

Whether such cruel Usage as this will be looked upon as a Punishment adequate to his Fault, I know not; but this I very well know, that the Effects of such Usage have proved a *most severe one*. Few Men are there, even among those whose happy Fortunes have set them far above the Reach of Malice, who would not be sensible of the Shocks he has met with: How greatly then must they be felt by one whose Well-being depends upon the Success he meets with in his *Profession*; a *Profession* in which he began to make some happy Progress, and which many, I believe, will own he pursued with Steadiness, Faithfulness, and not always the most lucrative Views.

But though the Current of his Prosperity at present takes a different Course; though he is surrounded on every side by Accusers; there are, however, *those* whom he can, and whom, as he is put upon his Defence, he *will* appeal to: *Those* I mean whom, as *Tutor*, he has had the Honour of breeding up. *They* will, I am persuaded, upon this Occasion, do his Character Justice, and not scruple to acknowledge the diligent and prudent Care with which he ever attended them. He has the Satisfaction of seeing these now growing up; and as he looks upon them as an Honour to himself, so he has Reason to believe they will be no Discredit to that *Society*, of which, for *twenty Years*, he had the Happiness of being a Member; and for which, as he always had the warmest and most grateful Affections, so I will venture

to say, he will for ever retain the deepest *Regard, Esteem, Veneration*.

Yet the greatest and most sensible Comfort he at present enjoys, is that, I believe, of an *innocent Heart*, and a *clear Conscience*. His Fault, though magnified and misrepresented in the blackett Manner, amounts only to *his having said some few unguarded Words before a Boy, relating to Women*. This is his Fault, and for this Fault he has most *grievously suffered*.

But as to that other *infernal Crime*, towards the committing of which, his greatest Accusers cannot carry their Accusation further than a *bare Suspicion of an Intention only*, I will take upon me to affirm, from the Bottom of his Soul he abhors and detests it. And as he has already, by taking his most *solemn Oath*, by receiving the *most holy Sacrament*, (the only *external Proofs* he can give of his Innocence) utterly disclaim'd, not *Intentions* only, but any the least *Thought* that had the most distant Tendency to that horrid and damnable Vice ; so he has been often heard to say, that was he upon his Death-Bed, he would, with his latest Breath, steadily persist in the Professions of that Innocence ; and that he would be well content, if his Peace in this World, and his Happiness in the next, wholly and solely depended upon the Truth and Sincerity with which he made those Professions.

E X T R A C T S

FROM THE

LOCAL STATUTES

OF THE

UNIVERSITY of OX---D.

Viz. { Tit. x. Sect. II. §. I. *Enume-*
A. { *ratio Negotiorum quæ ad Do-*
 { *mm Convocationis spectant.*

“ Q Uandoquidem Negotia majoris Mo-
“ menti cum majore Deliberatione sunt
“ tractanda ; & quæ ad Universam spectant
“ Academiam, ab Universis approbari con-
“ gruum est ; *Statutum est*, ut in Convoca-
“ tione Doctorum, Magistrorum Regentium
“ & Non-regentium (prout de antiquo fieri
“ consuevit) de majoribus Negotiis ac totum
“ Universitatis Corpus tangentibus *deliberetur*
“ & *determinetur* ----- Veluti de Legibus &
“ Statutis

“ Statutis rogandis, vel etiam abrogandis, in-
 “ *terpretandis*, moderandis, &c. &c. &c.—
 “ de amovendis Academiae Dehonestamentis
 “ & Gradu privandis;-----Denique de qui-
 “ buscunque ad Statum, Dignitatem & Inco-
 “ lumitatem Universitatis spectantibus.”

B. { Tit. xxi. Sect. 12. *De iis qui ma-*
jorum Criminum Suspicionem te-
nentur.

“ SI quis vel publicâ Famâ vel privatâ cu-
 “ jusdam Informatione de gravi aliquo
 “ Crimine apud Vice-Cancellarium delatus
 “ fuerit, nec ad convincendum & condemnan-
 “ dum Probationes sufficiant: Ejusmodi ta-
 “ men sint, ut ex iis vehemens Suscipio oria-
 “ tur, potest Vice-Cancellarius *Rêo Purga-*
 “ *tionem* indicere, & si in eo defecerit, per-
 “ inde ac de Convicto statuere: [cavebit ta-
 “ men ne quempiam ad Purgationis Pericu-
 “ lum admittat, quem in Perjurium ruitu-
 “ rum crediderit, aut quem *fontem* esse judi-
 “ caverit.]

“ Quod si per Modum Purgationis proce-
 “ dere non libeat Cautionem tamen fidejusso-
 “ riam sufficientem, de Pace conservanda, &
 “ quoad Crimina objecta, honestè in Poste-
 “ rum se gerendo, interponere, priusquam di-
 “ mittat, coget & compellet.”

C. { Tit. xxi. Sect. 10. *De Modo pro-*
cedendi in Causis Criminalibus.

“ **I**N Causis Criminalibus & iis quæ ad Re-
“ formationem Morum spectant, non so-
“ lum publice in Curia, sed etiam in privato
“ Hospitio, aut alibi extra Curiam Cancellarius
“ five Vice-Cancellarius vel ad Sectam Partis,
“ vel ex Officio procedere poterit, &c.

D.—Stat. 13. Car. II. Chap. 12. § 4.

“ **I**T shall not be lawful for any Archbishop,
“ Bishop, Vicar - General, Chancellor,
“ Commissary, or any other Spiritual or Ec-
“ clesiastical Judge, Officer, or Minister, or any
“ other Person, having or exercising Spiritual or
“ Ecclesiastical Jurisdiction, to tender or admi-
“ nister unto any Person whatsoever the Oath,
“ usually called the Oath *ex officio*, or any
“ other Oath, whereby such Person to whom
“ the same is tendered or administered, may be
“ charged or compelled to confess or accuse,
“ or to purge him or herself, of any criminal
“ Matter or Thing, whereby he or she may
“ be liable to Censure and Punishment.

F I N I S.







